

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES PLUNKETT,
Plaintiff,

v.

W. VAUGHN, et al.,
Defendants.

No. 2:24-cv-1936 DAD CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On September 19, 2024, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

After conducting the required screening, the court finds that plaintiff may proceed on claims for denial of medical care in violation of the Eighth Amendment against defendants Lehil and Baily. Plaintiff has two options: proceed on those claims or file a second amended complaint in an attempt to cure deficiencies with respect to the other claims. If plaintiff chooses

1 to proceed on the claims described above, the court will construe this as a request to voluntarily
2 dismiss the additional claims and defendants pursuant to Rule 41(a)(1)(i) of the Federal Rules of
3 Civil Procedure.

4 If plaintiff elects to amend, plaintiff is informed as follows. Plaintiff alleges she has been
5 discriminated against because she is transgender. The Equal Protection Clause of the Fourteenth
6 Amendment generally protects against unequal treatment as a result of intentional or purposeful
7 discrimination. Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997). In order state a claim for
8 violation of the Equal Protection Clause, plaintiff has to allege that she is being treated differently
9 from others with whom she is similarly situated, and that the unequal treatment is the result of
10 intentional or purposeful discrimination. Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997).

11 Also, plaintiff must allege in specific terms how each named defendant is involved. There
12 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection
13 between a defendant's actions and actionable injury. Rizzo v. Goode, 423 U.S. 362 (1976).
14 Vague and conclusory allegations of official participation in civil rights violations, such as
15 allegations against someone simply because they are a supervisor, are not sufficient. Ivey v.
16 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

17 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
18 make plaintiff's second amended complaint complete. Local Rule 220 requires that an amended
19 complaint be complete in itself without reference to any prior pleading.

20 In accordance with the above, IT IS HEREBY ORDERED that:

21 1. Plaintiff has the option to proceed immediately on the claims described herein. In the
22 alternative, plaintiff may choose to file a second amended complaint to fix the deficiencies
23 identified in this order with respect to the remaining claims.


24 2. Within 21 days from the date of this order, plaintiff shall complete and return the
25 attached Notice of Election form notifying the court whether she wants to proceed on the
26 screened amended complaint or whether she wants time to file a second amended complaint.

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28 /////

1 3. If plaintiff fails to return the attached Notice of Election within the time provided, the
2 court will construe this failure as consent to dismiss the deficient claims and proceed only on the
3 cognizable claim identified above.

4 Dated: March 20, 2025


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF ELECTION

Check only one option:

____ 1. Plaintiff wishes to proceed on claims for denial of medical care in violation of the Eighth Amendment against defendants Lehil and Baily; **OR**

____ 2. Plaintiff wants time to file a second amended complaint.

DATED:

Plaintiff